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Jay C. Keithley
Vice President
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United Telephone Companies

June 24, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20036

RE: In the Matter of The Bell Operating Companies' Tariff for the 800 Service
Management System, Tariff F.C.C. No. 1, Transmittal No. 1

800 Data Base Access Tariffs, CC Docket No. 93-129

Dear Ms. Searcy:

Attached are the original and five copies of the Reply to Oppositions to Application for Review in the proceeding referenced above.

If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in cursive script that reads "Jay C. Keithley".

Jay C. Keithley
Vice President
Law and External Affairs

Attachment

JCK/mlm

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 24 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
The Bell Operating Companies')
Tariff for the 800 Service)
Management System, Tariff)
F.C.C. No. 1)
)
and)
)
800 Data Base Access Tariffs)

Transmittal No. 1

CC Docket No. 93-129

REPLY TO OPPOSITIONS TO APPLICATION FOR REVIEW

The United Telephone companies ("United") hereby reply to the Ad Hoc Telecommunications Users Committee's ("Ad Hoc") and MCI Telecommunications Corporation's ("MCI") Oppositions to GTE's Application for Review ("Application") of the Bureau's 800 Database Tariff Order.¹

The 800 Database Tariff Order suspended for five months the amount of GTE's and United's basic 800 database query rate that exceeded .67 cents per query. GTE filed its Application on May 28, 1993. United filed an Emergency Application for Review, substantially similar to GTE's, on May 3, 1993. Given the identical issues and similar arguments of the United and GTE Applications, United is compelled to respond to MCI's and Ad Hoc's Oppositions.

1. In the Matter of the Bell Companies' Tariff for the 800 Service Management System Tariff F.C.C. No. 1 and 800 Data Base Access Tariffs, CC Docket 93-120, Order, (Common Carrier Bureau) DA 93-491, released April 28, 1993 ("800 Database Tariff Order").

Both Ad Hoc and MCI rely heavily on the Commission's Dark Fiber Order² as support for the Bureau's suspension of a portion of GTE's and United's rates in the 800 Database Tariff Order. This reliance is misplaced. A careful analysis of the Dark Fiber Order and the predecessor Common Carrier Bureau Dark Fiber Order³ demonstrates why the Bureau's partial suspension of GTE's and United's rates in the 800 Database Tariff Order was arbitrary, capricious and unlawful.

Indeed, in the Common Carrier Bureau Dark Fiber Order, the Bureau relied on Section 204(a), 47 U.S.C. Section 204(a), as authority for the suspension of a portion of the dark fiber rates filed by several BOCs. However, any similarities between the Bureau's actions there and in the 800 Database Tariff Order stops at that point.

In its dark fiber order, the Bureau thoroughly analyzed the cost support submitted by each BOC and found serious problems. For instance, the Bureau found:

In particular, there is substantial reason to believe petitioner's claims that these dark fiber rates include

2. In the Matter of Local Exchange Carriers' Individual Case Basis DS3 Offerings, CC Docket 88-136, Memorandum Opinion and Order, 6 FCC Rcd 4891 (1991) ("Dark Fiber Order").

3. In the Matter of Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket 88-136, Memorandum Opinion and Order, (Common Carrier Bureau) 6 FCC Rcd 1436 (1991) ("Common Carrier Bureau Dark Fiber Order").

costs of equipment and facilities not needed or used by dark fiber customers.⁴

The Bureau thus had reason to believe the filed rates unlawful by "violating the fundamental principle that rates must be cost based to be reasonable." ⁵

The Bureau used the same methodology -- per mile cost of dark fiber -- to determine how much of each of the BOC's rates to suspend. However, in applying this methodology, the Bureau utilized each individual BOC's investment in cable and revenue requirement. The result was greatly divergent rates, varying

cost supported. However, the Bureau did not investigate the costs underlying the 800 database rates. Rather, the Bureau:

... reviewed the basic query rates in the transmittals to identify any that were anomalously high because they exceeded the industry mean rate plus one standard deviation. Such analysis, even though not exactly precise, is generally reasonable in this context since all LECs are deploying similar data base systems.⁷

Just because a rate diverges from the industry average does not make it unreasonable or unlawful. Indeed, such a rate is not even an anomaly, it simply diverges from the average. Similar technology may have similar costs, but the unit cost of the services provided by such technology can vary dramatically because of such factors as widely divergent demand and network configurations across companies.

For example, United's size is so disproportionately small, as compared with most of the other data base owners, that it is obvious that demand for United's data base is much less than demand for the other owners' data bases. This fact alone explains much of the difference in rates. However, the Bureau chose to ignore this and any other factor.⁸

The Bureau's action has, in effect, turned the tariff review process on its head by reviewing rates alone, without any

7. 800 Database Tariff Order at par. 19.

8. The Bureau reviewed and revised certain exogenous costs of United and other LECs, but this revision was unrelated to the rate reduction.

examination of the cost support used to develop those rates. In partially suspending the rates, without investigating the reasonableness of the underlying cost support, the Bureau has acted arbitrarily and unlawfully. Accordingly, United requests the Commission to reverse the Bureau's decision to suspend that portion of the 800 data base rates that exceeded .67 cents per query.

Respectfully submitted,

UNITED TELEPHONE COMPANIES

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June 24, 1993

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 24th day of June, 1993, sent via Hand Delivery, or U.S. First Class Mail, postage prepaid, a copy of the foregoing "Reply to Oppositions to Application for Review" in the Matter of 800 Data Base Access Tariffs, CC Docket No. 93-129, filed this date with the Secretary, Federal Communications Commission, to the persons listed below.

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